

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jun 11, 2020**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DIMITAR K. DERMENDZIEV,

Plaintiff,

v.

ROBERT L. HERZOG, et al.,

Defendants.

No. 4:19-cv-05029-SMJ

**ORDER DENYING MOTION FOR  
RECONSIDERATION,  
GRANTING MOTION FOR  
EXTENSION OF TIME,  
STRIKING SECOND AMENDED  
COMPLAINT, AND DENYING  
MOTION FOR APPOINTMENT  
OF COUNSEL**

Before the Court is Plaintiff Dimitar K. Dermendziev's "Three Part Motion; Part One – Objection of Dismissed Claims in Apr[il] 14, 2020 Court Order and a Motion to Reconsider the Dismissed Claims; Part Two – Emergency Motion to Extend Time, 60 days to file a Second Amended Complaint from the set order date 05-15-20; Part Three – Plaintiff's Motion for Appointment of Counsel," which was noted for hearing without oral argument on May 22, 2020. ECF No. 28. Plaintiff, a prisoner in the Special Offenders Unit of the Monroe Correctional Complex, is proceeding *pro se* and *in forma pauperis*. Defendants have not been served in this action. Having reviewed the pleadings and the file in this matter, the Court is fully informed and denies the Motion for Reconsideration, grants the Motion for Extension of Time, and denies the Motion for Appointment of Counsel.

**ORDER DENYING MOTION FOR RECONSIDERATION, GRANTING  
MOTION FOR EXTENSION OF TIME, STRIKING SECOND AMENDED  
COMPLAINT, AND DENYING MOTION FOR APPOINTMENT OF  
COUNSEL – 1**

**MOTION FOR RECONSIDERATION**

On April 15, 2020, the Court dismissed Plaintiff's First Amended Complaint with leave to file a second amended complaint that complies with Federal Rule of Civil Procedure 8 as to his claims for retaliation in violation of the First Amendment and for excessive noise in violation of the Eighth Amendment. ECF No. 27 at 2, 28. Plaintiff objects to the dismissal of his other claims for relief and asks this Court to reconsider the Order. ECF No. 28 at 2-5.

A motion for reconsideration may be reviewed under either Federal Rule of Civil Procedure 59(e) (motion to alter or amend a judgment) or 60(b) (relief from judgment). *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). "A district court may properly reconsider its decision if it '(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.'" *Smith v. Clark Cty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (*quoting Sch. Dist. No. 1J*, 5 F.3d at 1263). "There may also be other, highly unusual, circumstances warranting reconsideration." *Sch. Dist. No. 1J*, 5 F.3d at 1263.

Plaintiff has not presented newly discovered evidence, demonstrated that the Court committed clear error, or shown the Order dismissing claims which failed to state plausible claims for relief was manifestly unjust. There has also been no intervening change in controlling law and there are no other circumstances

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warranting reconsideration. *Id.* Accordingly, Plaintiff's Motion for Reconsideration, ECF No. 28 at 1-6, is denied.

### MOTION FOR EXTENSION OF TIME

Next, Plaintiff requests an additional sixty days from the deadline of May 15, 2020, to file a Second Amended Complaint. ECF No. 28 at 6–9. The decision to grant an extension of time is discretionary with the Court. Fed. R. Civ. P. 6(b). Because Plaintiff is proceeding *pro se*, and for good cause shown, the Court will grant Plaintiff's motion.

On May 26, 2020, Plaintiff submitted a document consisting of 205 pages, titled, "Second Amended Complaint." ECF No. 29. The cover letter for the Amended Complaint indicated the document was intended to be 530 pages, ECF No. 29-4 at 1, and Plaintiff later filed additional attachments totaling 330 pages, ECF No. 30. The Amended Complaint does not comply with the Court's directive that Plaintiff's amended complaint be no more than **twenty-five pages**. *See* ECF No. 27 at 28. Therefore, the Court directs the documents received on May 26, 2020 and June 2, 2020, ECF Nos. 29, 30, be stricken, and Plaintiff may file a second amended complaint which complies with the Court's directives on or before **July 14, 2020. Plaintiff is cautioned that the Court will dismiss this action for failure to comply with court orders if plaintiff files a Second Amended Complaint that exceeds twenty-five pages.**

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**MOTION FOR APPOINTMENT OF COUNSEL**

Finally, Plaintiff asks this Court to appoint counsel to represent him in this case. ECF No. 28 at 9–11. This Court has discretion to designate counsel pursuant to 28 U.S.C. §1915(e)(1) only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Determining whether exceptional circumstances exist requires evaluating Plaintiff’s “likelihood of success on the merits” and “ability . . . to articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Id.* (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)).

Plaintiff contends that he is unable to afford counsel; he has been unable to solicit the help of attorneys; the issues raised by his claims are long and complex; his imprisonment greatly limits his ability to litigate; and a lawyer would assist Plaintiff in the presentation of evidence. ECF No. 28 at 9–11. Plaintiff’s circumstances are, in short, like those of all incarcerated persons. In the previous Order, the Court provided Plaintiff with the relevant legal standards and explained how he could present a legally sufficient complaint. ECF No. 27. At this time, the record does not reflect exceptional circumstances warranting the appointment of counsel to assist Plaintiff.

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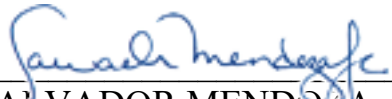
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Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Reconsideration, ECF 28 at 1–6, is **DENIED**.
2. Plaintiff's Motion for Extension of Time, ECF No. 28 at 6–9, is **GRANTED**. Plaintiff shall file a Second Amended Complaint, **not to exceed twenty-five pages** and presenting only claims for retaliation in violation of the First Amendment and for excessive noise in violation of the Eighth Amendment, on or before **JULY 14, 2020**.
3. The Clerk of Court shall **STRIKE** the Second Amended Complaint received on May 26, 2020, ECF No. 29, and attachments to the Second Amended Complaint received on June 2, 2020, ECF No. 30.
4. Plaintiff is cautioned that no further extensions of time will be granted in this action absent extraordinary circumstances.
5. Plaintiff's Motion for Appointment of Counsel, ECF No. 28 at 9–11, is **DENIED**.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide a copy to *pro se* Plaintiff.

**DATED** this 11<sup>th</sup> day of June 2020.

  
SALVADOR MENDOZA, JR.  
United States District Judge

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